

REMARKS

Status of the Claims

Upon entry of the amendment above, claims 1-15, 19-27, 29-41, 44, 47, and 53-64 will be pending, claims 1, 19, 22, 29, and 32 being independent.

Summary of the Office Action

Claims 1-15, 19-21, 40, 41, 44, and 47 are allowed.

Claims 22-27 and 29-39 are rejected under 35 USC §103(a) as being unpatentable over ZAINO (U.S. Patent No. 4,447,967) in view of BARTELS (U.S. Patent No. 4,232,458).

Response to the Office Action

Among other claims, independent claims 22, 29, and 32 stand rejected. In the amendment above, each of the rejected independent claims has been amended by specifying that at the rear end of the heel zone, at the rear end of the upper, and at the rear end of the area behind a heel of the wearer, there is no upwardly extending seam.

By contrast, the ZAINO shoe includes a stitched same 2 at the rear end, as well as another at the front end, as well as another around the entirety of the lower periphery of the upper 4, 5 for attachment to the base 6. Further, there would appear to be no reason to have omitted the rear stitched seam of ZAINO and, therefore, a modification by means of BARTELS or otherwise would not have been obvious.

At least for the foregoing reason, reconsideration and withdrawal of the rejection of claims 22, 29, and 32, and that of the claims depending therefrom, is kindly requested.

Further, Applicant's claim 39 specifies that no inner sole is positioned inside the upper. Part of the fundamental construction of ZAINO's shoe is a rigid grid shown in his Fig. 4 and described in column 2, lines 9-19. This grid is created by penetrates from outside to within the sock 1 to form "gripping projections to bond the plastic material securely to the sock." Therefore, to remove the insole created by the grid would be impossible.

Further, Applicant's claim 38 specifies that there is an "inner sole" beneath the upper and above the outer sole. Because the rigid plastic of ZAINO's shoe extends continuously from outside the bottom of the shoe to within the fabric sock 1 (see Fig. 4), Applicant submits that there would be no way to position an inner sole between the upper and the outer sole.

Applicant has added new claims 53-64 which depend, directly or indirectly, from the rejected independent claims, adding limitations which also provide reasons for patentably distinguishing the invention from ZAINO. For example, claims 53-55 refer to a stitched assembly seam that extends along less than an entirety of the lower periphery of the vamp (or the lower periphery of the extensible, ventilated, textile material). Of course, along the entirety of the upper 4, 5 of ZAINO is an assembly seam that attaches the base 6 of the ZAINO's sock.

In new claims 57 and 60, Applicant specifies that there is no inner sole positioned inside the upper. ZAINO provides an inner sole to rest upon the aforementioned grid. Applicant submits that one skilled in the art would not omit the inner sole due to the discomfort that would be created by the grid.

New claims 58 and 61 specify that a bottom surface of a wearer's foot is adapted to be positioned next to the inner layer when the article of footwear is worn. Of course, because plastic is injected through the bottom of ZAINO's fabric sock to form the upwardly projecting grid, a wearer's foot – even if it were to be inserted into ZAINO's shoe without an insole – would be spaced above the fabric sock.

Finally, new claims 62, 63, and 64 depend from rejected independent claims 22, 29, and 32, respectively, and call for a shock-absorbing comfort sole positioned beneath the extensible, ventilated, textile material and above the outer sole. There would be no reason to have added such a comfort sole in ZAINO's shoe, particularly since ZAINO's fabric sock extends from above to beneath the top of the material of which the outer sole is a part.

SUMMARY AND CONCLUSION

Reconsideration and allowance are requested in view of the amendment above, which is believed to place the claims in condition for allowance.

A fee is being paid herewith for an extension of time for three months and for a Request for Continued Examination (RCE). No additional fee is believed to be due at this time. However, the Commissioner is authorized to charge any fee required for acceptance of this reply as timely and/or complete to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone number, fax number, or email address given below.

Respectfully submitted,
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